There is nothing in that evidence to warrant the conclusion that the accused had changed his residence from the district of Kuala Langat to the district of Kajang. That being so, the offence has not been proved by the evidence.

I therefore set aside the conviction and sentence.

This accused has served one month of the sentence of two months, and I direct also that that period served should count as part of the term of the order for police supervision.

*Conviction quashed.*

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[REVISIONAL CRIMINAL JURISDICTION]

HORNE, J.

June 14, 1940.

## HEW KEN YEW vs. PUBLIC PROSECUTOR.

[SEREMBAN CRIMINAL SUMMONS CASE No. 38 of 1940]

*Public Service Vehicles—(Conditions of Fitness, etc.) Rules, 1937, rule 62—(Conduct of Drivers, etc.) Rules 1937, rules 10 and 12—Dangerous substance introduced by passenger—Explosion—Responsibility of conductor.*

The accused, a bus conductor, was convicted under rule 62 of the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules, 1937. It appeared that a passenger had brought on to the 'bus a metal cylinder containing sulphur dioxide, which had exploded. Rule 10 of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Rules prohibits passengers from travelling with dangerous or offensive articles while rule 12 of the same rules authorises the conductor to remove a passenger "contravening these rules." The conviction was based on the finding, applying the foregoing rules 10 and 12, that the appearance of the cylinder should have caused the conductor to enquire as to its contents.

On reference by the Public Prosecutor, Federated Malay States, to the Court of a Judge:

**Held,** that the (Conduct of Drivers, etc.) Rules are not to be read with the (Conditions of Fitness, etc.) Rules, and rule 12 of the former is referable only to that particular set of rules.

**Held further,** that rule 62 of the (Conditions of Fitness, etc.) Rules should be restricted to use of a vehicle in the sense of its operation and to substances necessary for its operation.

**Horne, J.**—The appellant was convicted and fined $50 on the offence set out in the charge, viz.:

> "That you at about 4.10 p.m. on 7th March, 1940, at 12½ mile Mantin, being the conductor of public service vehicle bearing registration No. SL. 3561, did permit a dangerous substance to wit, a cylinder of sulphur dioxide to be carried on the said vehicle, and did thereby commit an offence under rule 62 of P.S.V. (Conditions of Fitness, Equipment and Use) Rules, 1937."

He was the conductor of a bus coming from Kuala Lumpur to Seremban. At Beranang an explosion took place in the passenger accommodation and many passengers suffered sore eyes owing to contact with sulphur dioxide gas. It appears that one of the passengers brought on board a metal cylinder (probably steel) containing sulphur dioxide which is used in certain refrigerators. This passenger stated that he had the cylinder under his seat, also that it had been in use for three years, and he had 10 years' experience without having an explosion. The cause of the explosion or escape of gas is not established.

The conviction is based on the finding that the appearance of the cylinder should have caused the conductor to enquire as to the contents of the cylinder, that he failed to do so and he permitted the article to be carried. The Magistrate also brings in aid rule 12 of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Rules. There is nothing in the latter rules to say that they shall be read with the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules. And the conductor's power under rule 12 of the former, viz., to remove a passenger "contravening those rules" is referable only to that particular set of rules. One of them rule 10 (ii) prohibits passengers travelling with firearms or dangerous or offensive articles, but to apply rule 12 the conductor must have actual knowledge of the contravention. Hence I suppose the attempt to charge him under rule 62 of the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules.

The real difficulty in this case is to know what things are forbidden by rule 62 of the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules. By rule 10 (ii) of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Rules a passenger shall not travel with any dangerous article. By rule 62—

> "Except for the fuel and lubricant necessary for the use of the vehicle no explosive highly inflammable or otherwise dangerous substance shall be carried on a vehicle unless it is so packed that even in the case of an accident to the vehicle it is unlikely to cause damage or injury to the vehicle or passengers carried therein."

This rule is found in a set of rules relating to the "use of the vehicle". In a sense passengers use the vehicle, though I think the more apt expression is that they travel in or on it. As there is a rule governing the conduct of passengers in relation to dangerous articles, this rule can and should be restricted to use of

the vehicle in the sense of operation. The rules are entitled Conditions of Fitness, Equipment and Use; penalties only apply to Part II and Part III. The penalty clause applies to a person who uses or permits to be used the vehicle, who will be the operator of the service unless the rule shows that his servant is included or intended instead. Rule 62 does not apply to carriage of goods for reward. But certain substances though of themselves dangerous may be "carried" if safely packed. I think this was intended to mean substances "for the use of the vehicle". It becomes difficult to understand why there should be a rule permitting dangerous substances to be carried if packed in a certain way unless it means substances necessary for the use of the vehicle; the reference to the possibility of accident to the vehicle also shows I think that the rule relates to substances necessary for use, that is used in operation of the vehicle and which of course will be there whatever accident may occur. This rule, read with rule 31, is sufficiently certain as to the person commanded but whether the standard of packing laid down is anything more than a counsel of perfection I take leave to doubt.

I therefore think no driver or conductor could be prosecuted under this rule. For these reasons the conviction is quashed.

*Conviction quashed.*

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[APPELLATE CRIMINAL JURISDICTION]

HOWES, J.

June 21, 1940.

## CHUNG KOK YEANG

vs.

## PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 64 of 1940]

*Probate and Administration Enactment (Cap. 8), section 101—Penal Code (Cap. 45), section 176—Resealed grant—Inventory—Foreign executor's duty to exhibit—Intentional omission.*

The appellant was the executor of C.T.C. deceased. He obtained probate of the will in Penang and later the Grant of Probate was resealed in Ipoh. On the 27th June, 1939, the appellant was served with a requisition under section 101 (iii) of the Probate and Administration Enactment requiring him to file an inventory. On request, the time for exhibiting the inventory was extended to the 22nd August, 1939. The appellant instructed his solicitors to file an account, but said nothing about an inventory. The inventory was not filed and on the 18th January, 1940, a summons was issued charging the appellant with an offence under section 176 of the Penal Code, and he was convicted.

**Held,** there was no evidence that the solicitors had, in disregard of instructions, failed to supply the inventory. The appellant was legally bound to exhibit the inventory and he had omitted to do so. A man is presumed to have intended his acts, which include omissions, and if the omission cannot be accounted for it must be regarded as intentional. It is a question of fact as to what amounts to an intentional omission.

**Held further,** where a foreign probate has been resealed in the Federated Malay States the executor has all the rights and obligations of an executor to whom the grant has been made by this Court, including the obligation to exhibit an inventory.

**Held also,** after the expiration of the periods mentioned in section 101 (i) (a) and (b) of the Probate and Administration Enactment, the Court may at any time call for an inventory or account. The Court may do this of its own motion, and the word "Court" includes "Registrars."

Case referred to:—

(1) *Ex parte Blain, In re Sawers* (1879) 12 Ch. D. 522.

*F. A. Reid* for appellant.

*T. V. A. Brodie,* Deputy Public Prosecutor, for respondent.

**Howes, J.**—In this case the appellant was convicted and fined $10 on the following charge: "That on 27th June, 1939, you as executor of Chung Thye Chong were required under section 101 of the Probate and Administration Enactment by the Supreme Court, Ipoh, to exhibit therein an inventory of the estate of the said Chung Thye Chong within 30 days and you have intentionally omitted to comply with the requisition and you are thereby deemed to have committed an offence punishable under section 176 of the Penal Code."

The appeal has been argued under three main heads. The first was whether it was proved that the appellant had intentionally omitted to comply with the requisition to exhibit an inventory.

Whilst the words "intentionally omits to comply" in section 101 sub-section (iii) are somewhat difficult to interpret, the Magistrate found as a fact that the appellant had done so.

It appears that on June 27, 1939, the requisition referred to in section 101 (iii) of the Probate and Administration Enactment was served on the appellant, requiring him to file an inventory within 30 days from the date of the notice, viz., the 19th June, 1939.

Application was made by the appellant's solicitors to the Assistant Registrar and the time for exhibiting the inventory was extended another 30 days, viz., to